1 AN ACT relating to open records.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔Section 1. KRS 61.870 is amended to read as follows:

4 As used in KRS 61.870 to 61.884, unless the context requires otherwise:

5 (1) "Public agency" means:

6   (a) Every state or local government officer;

7   (b) Every state or local government department, division, bureau, board,

8   commission, and authority;

9   (c) Every state or local legislative board, commission, committee, and officer;

10   (d) Every county and city governing body, council, school district board, special

11   district board, and municipal corporation;

12   (e) Every state or local court or judicial agency;

13   (f) Every state or local government agency, including the policy-making board of

14   an institution of education, created by or pursuant to state or local statute,

15   executive order, ordinance, resolution, or other legislative act;

16   (g) Any body created by state or local authority in any branch of government;

17   (h) *1.* Any body which, within any fiscal year, derives at least twenty-five

18   percent (25%) of its funds expended by it in the Commonwealth of Kentucky

19   from state or local authority funds.[]

20   *2.* However, any funds derived from a state or local authority in

21   compensation for goods or services that are provided by a contract

22   obtained through a public competitive procurement process shall not be

23   included in the determination of whether a body is a public agency under

24   *subparagraph 1. of this paragraph*[this subsection;]

25   *3. The provisions of subparagraph 2. of this paragraph shall not apply to*

26   *funds derived from a public agency in compensation for the*

27   *performance of any services or functions performed by that public*

1   *agency relating to public utilities, water and wastewater services, fire*

2   *protection, corrections and incarceration, law enforcement, tax*

3   *assessment and collection, or waste management;*

4   (i)   Any entity where the majority of its governing body is appointed by a public

5   agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (j), or (k) of

6   this subsection; by a member or employee of such a public agency; or by any

7   combination thereof;

8   (j)   Any board, commission, committee, subcommittee, ad hoc committee,

9   advisory committee, council, or agency, except for a committee of a hospital

10   medical staff, established, created, and controlled by a public agency as

11   defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (k) of this

12   subsection; and

13   (k)   Any interagency body of two (2) or more public agencies where each public

14   agency is defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (j) of

15   this subsection;

16   (2)   "Public record" means all books, papers, maps, photographs, cards, tapes, discs,

17   diskettes, recordings, software, or other documentation regardless of physical form

18   or characteristics, which are prepared, owned, used, in the possession of or retained

19   by a public agency. "Public record" shall not include any records owned or

20   maintained by or for a body referred to in subsection (1)(h) of this section that are

21   not related to functions, activities, programs, or operations funded by state or local

22   authority;

23   (3)   (a)   "Software" means the program code which makes a computer system

24   function, but does not include that portion of the program code which contains

25   public records exempted from inspection as provided by KRS 61.878 or

26   specific addresses of files, passwords, access codes, user identifications, or

27   any other mechanism for controlling the security or restricting access to public

1   records in the public agency's computer system.

2   (b)   "Software" consists of the operating system, application programs,

3   procedures, routines, and subroutines such as translators and utility programs,

4   but does not include that material which is prohibited from disclosure or

5   copying by a license agreement between a public agency and an outside entity

6   which supplied the material to the agency;

7   (4)   (a)   "Commercial purpose" means the direct or indirect use of any part of a public

8   record or records, in any form, for sale, resale, solicitation, rent, or lease of a

9   service, or any use by which the user expects a profit either through

10   commission, salary, or fee.

11   (b)   "Commercial purpose" shall not include:

12   1.   Publication or related use of a public record by a newspaper or

13   periodical;

14   2.   Use of a public record by a radio or television station in its news or other

15   informational programs; or

16   3.   Use of a public record in the preparation for prosecution or defense of

17   litigation, or claims settlement by the parties to such action, or the

18   attorneys representing the parties;

19   (5)   "Official custodian" means the chief administrative officer or any other officer or

20   employee of a public agency who is responsible for the maintenance, care and

21   keeping of public records, regardless of whether such records are in his ***or her***

22   actual personal custody and control;

23   (6)   "Custodian" means the official custodian or any authorized person having personal

24   custody and control of public records;

25   (7)   "Media" means the physical material in or on which records may be stored or

26   represented, and which may include, but is not limited to paper, microform, disks,

27   diskettes, optical disks, magnetic tapes, and cards;

1   (8)   "Mechanical processing" means any operation or other procedure which is

2   transacted on a machine, and which may include, but is not limited to a copier,

3   computer, recorder or tape processor, or other automated device; and

4   (9)   "Booking photograph and photographic record of inmate" means a photograph or

5   image of an individual generated by law enforcement for identification purposes

6   when the individual is booked into a detention facility as defined in KRS 520.010 or

7   photograph and image of an inmate taken pursuant to KRS 196.099.